



Virginia  
Regulatory  
Town Hall

## Final Regulation Agency Background Document

<b>Agency Name:</b>	State Board of Social Services
<b>VAC Chapter Number:</b>	22 VAC 40-680-10 et seq.
<b>Regulation Title:</b>	Virginia Energy Assistance Program – <u>Low Income Home Energy Assistance Program (LIHEAP)</u>
<b>Action Title:</b>	Establish Cooling Assistance Component
<b>Date:</b>	December 18, 2002

Please refer to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99) , and the *Virginia Register Form, Style and Procedure Manual* for more information and other materials required to be submitted in the final regulatory action package.

### Summary

*Please provide a brief summary of the new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment; instead give a summary of the regulatory action. If applicable, generally describe the existing regulation. Do not restate the regulation or the purpose and intent of the regulation in the summary. Rather, alert the reader to all substantive matters or changes contained in the proposed new regulation, amendments to an existing regulation, or the regulation being repealed. Please briefly and generally summarize any substantive changes made since the proposed action was published.*

The Virginia Energy Assistance Program, funded by the Low-Income Home Energy Assistance (LIHEA) Act, is a federal block grant with state flexibility in program administration. The regulatory change gives flexibility to the Virginia Department of Social Services to adjust the maximum eligibility income limit for applicants, establishes a Cooling Assistance component within the Virginia Energy Assistance Program, and requires mandatory participation in the Cooling Assistance component by all local departments.

One substantive change was made since the proposed regulation was published. The eligibility criterion for alien status was changed to comply with changes in the federal law.

## Statement of Final Agency Action

*Please provide a statement of the final action taken by the agency: including the date the action was taken, the name of the agency taking the action, and the title of the regulation.*

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The Board of the Virginia Department of Social Services approved the final Virginia Energy Assistance Program regulation at the December 18, 2002 State Board meeting.

## Basis

*Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority, shall be provided. If the final text differs from that of the proposed, please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the final regulation and that it comports with applicable state and/or federal law.*

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Pursuant to §63.2-217 of the Code of Virginia (<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+63.2-217>), the State Board of Social Services has authority to promulgate rules and regulations necessary for operation of all assistance programs. The Virginia Energy Assistance Program is funded by a federal block grant through the Low-Income Home Energy Assistance (LIHEA) Act of 1981, Title XXVI of the Omnibus Budget Reconciliation Act of 1981, Public Law 97-35, as amended, (<http://www.acf.dhhs.gov/programs/liheap/policy.htm>). The block grant gives flexibility to design program components and eligibility requirements within broad parameters established by the LIHEA Act.

## Purpose

*Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the final regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.*

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This regulation formally establishes the Cooling Assistance component in the Virginia Energy Assistance Program and consequently required promulgation of regulations.

The regulation protects the health, safety and welfare of low-income citizens by ensuring the opportunity to apply for Cooling Assistance is offered statewide and that benefits are available to all eligible applicants.

## Substance

*Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement of the regulatory action's detail.*

The final regulation will make the Cooling Assistance component accessible to all low-income citizens by requiring all local departments of social services to participate and allows the department more flexibility in eligibility criteria.

## Issues

*Please provide a statement identifying the issues associated with the final regulatory action. The term "issues" means: 1) the advantages and disadvantages to the public of implementing the new provisions; 2) the advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.*

The regulation establishes a Cooling Assistance component that provides low-income households containing a vulnerable person with a means of supplementing the additional costs associated with cooling their homes. Utilities and local businesses will benefit from revenue for services and/or equipment purchased. Local departments of social services, area agencies on aging and community action programs will have an additional resource to which they can refer their clients.

Limited administrative funds and the mandatory requirement that all local departments participate in a Cooling Assistance component are concerns to some local departments. Most local departments currently opt to participate based on their remaining administrative funds. Use of Low-Income Home Energy Assistance Program (LIHEAP) funds for administration is capped at ten percent of the grant. Of that amount, seven percent is allocated to local departments for administering all components of the Virginia Energy Assistance Program. Some local departments experience difficulty in stretching their administrative allocation to cover all components for the entire fiscal year.

Mandatory participation in the Cooling Assistance component by all local departments is an advantage to residents statewide and insures that all types of energy assistance are equally available to residents of neighboring localities throughout the Commonwealth.

## Statement of Changes Made Since the Proposed Stage

*Please highlight any changes, other than strictly editorial changes, made to the text of the proposed regulation since its publication.*

22 VAC 40-680-20 B.2. reflects a change made to the text of the regulation since its publication at the proposed stage.

### Public Comment

*Please summarize all public comment received during the public comment period and provide the agency response. If no public comment was received, please include a statement indicating that fact.*

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The department received five public comments from local departments of social services; each opposed the requirement for mandatory participation by all local departments. The responders believe that mandatory participation and the lack of additional administrative funds will increase staff workload in an already overburdened workforce, and could result in reduction of effective service delivery in mandated programs. They also believe mandatory participation will decrease the available Cooling Assistance funds throughout the State thus reducing benefits in currently served areas most affected by extreme temperatures.

While not disagreeing with the commenters, the department believes that statewide implementation of this program is the only way to treat all citizens of the Commonwealth equitably.

### Detail of Changes

*Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or crosswalk - of changes implemented by the proposed regulatory action. Include citations to the specific sections of an existing regulation being amended and explain the consequences of the changes.*

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The regulatory changes to 22 VAC 40-680 will:

1. provide the Virginia Energy Assistance Program with flexibility to respond to federal funding fluctuations by giving the Department the authority to set the maximum income limit, not to exceed the maximum allowed by federal law;
2. add a Cooling Assistance component to the Virginia Energy Assistance Program. Extreme summer temperatures have increased energy costs of low-income households, and the lack of cooling equipment in homes creates an environment conducive to heat related medical emergencies for young children, the disabled, and the elderly;
3. require mandatory participation in Cooling Assistance by all local departments; and
4. establish conformity in the Virginia Energy Assistance Program with the federal law regarding eligibility for aliens.